

**United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Bonham Independent School District’s (“Bonham ISD”) Motion for Partial Dismissal of Plaintiff’s Original Complaint (Dkt. #6). After reviewing the relevant pleadings, the Court finds the motion should be denied.

BACKGROUND

On October 24, 2017, Plaintiff Norman Shelton filed her Complaint (Dkt. #1). On December 1, 2017, Bonham ISD filed its Motion for Partial Dismissal of Plaintiff's Original Complaint (Dkt. #6) arguing to dismiss Plaintiff's First Amendment retaliation claim. Plaintiff filed her response (Dkt. #22) on January 5, 2018, requesting leave to amend her pleadings. Bonham ISD filed its reply (Dkt. #24) on January 12, 2018.

The Court has yet to issue a scheduling order in this case and, as of the date of this Order, there is no deadline set for Plaintiff to file amended pleadings.

LEGAL STANDARD

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading once without seeking leave of court or the consent of the adverse party at any time before a responsive pleading is served. FED. R. CIV. P. 15(a). After a responsive pleading is served, “a party may amend only with the opposing party’s written consent or the court’s leave.” *Id.* Rule

15(a) instructs the court to “freely give leave when justice so requires.” *Id.* The rule “evinces a bias in favor of granting leave to amend.” *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 994 (5th Cir. 2005) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002)). But leave to amend “is not automatic.” *Matagorda Ventures, Inc. v. Travelers Lloyds Ins. Co.*, 203 F. Supp. 2d 704, 718 (S.D. Tex. 2000) (citing *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981)). Whether to allow amendment “lies within the sound discretion of the district court.” *Little v. Liquid Air Corp.*, 952 F.2d 841, 845–46 (5th Cir. 1992). A district court reviewing a motion to amend pleadings under Rule 15(a) may consider “whether there has been ‘undue delay, bad faith or dilatory motive, . . . undue prejudice to the opposing party, and futility of amendment.’” *Jacobsen v. Osborne*, 133 F.3d 315, 318 (5th Cir. 1998) (quoting *In re Southmark Corp.*, 88 F.3d 311, 314–15 (5th Cir. 1996)).

The Court has discretion to deny a motion to amend if amendment would be futile. *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872–73 (5th Cir. 2000) (citation omitted). Futility in the context of an amended complaint means that the amended complaint would fail to state a claim upon which relief could be granted. *Id.* at 873. The same standard of legal sufficiency applies as it would under Rule 12(b)(6). *Id.*

ANALYSIS

Bonham ISD argues that Plaintiff’s First Amendment retaliation claim fails because Plaintiff failed to plead any facts sufficient to establish municipal liability under § 1983. In her response, Plaintiff does not address the merits of Bonham ISD’s arguments, but instead requests leave to amend her complaint. The Court finds granting Plaintiff’s request appropriate in this case.

CONCLUSION

It is therefore **ORDERED** that Bonham Independent School District's Motion for Partial Dismissal of Plaintiff's Original Complaint (Dkt. #6) is **DENIED as moot**. Further, Plaintiff is **ORDERED** to file an amended complaint no later than February 1, 2018.

SIGNED this 18th day of January, 2018.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE